A

MANIAN KANDASAMY

v.

PENTADBIR TANAH DAERAH RAUB & ANOR

B

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
KANG HWEE GEE JCA
AZHAR MA'AH JCA
[CIVIL APPEAL NO: C-01-23-2002]

C

22 JUNE 2009

LAND LAW: *Caveats - Private caveat - Cancellation of - Appeal against - Court's power to extend caveat - Whether only exercisable where caveat still 'alive' - National Land Code, s. 326(2) - Whether National*

D

Land Code gives court power to revive/continue a cancelled private caveat - National Land Code, s. 329(2) - Operation of - Whether breached - Whether appellant precluded from entering a private caveat against land

LAND LAW: *Sale of land - Validity of - Transaction between*

E

beneficiary in estate of deceased and appellant - Whether conferred upon appellant caveatable interest - Whether beneficiary had no interest or property in personal estate of deceased person until administration and distribution complete - Whether transaction invalid and of no legal effect

SUCCESSION: *Administration - Sale of land - Validity of -*

F

Transaction between beneficiary in estate of deceased and appellant - Whether conferred upon appellant caveatable interest - Whether beneficiary had no interest or property in personal estate of deceased person until administration and distribution complete - Whether transaction invalid and of no legal effect

G

This was an appeal against the decision of the High Court in allowing the second respondent's application to cancel a private caveat lodged by the appellant against land known as GM 1889 Lot No 2437 Mukim Gali ('the said land'), of which the second

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respondent was the registered owner. The background facts were that the said land was previously registered in the name of the second respondent's late husband, Pakiry s/k Katan (deceased). On 22 March 1982, the appellant registered a private caveat against the said land (the first caveat) on the ground that he had

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purchased the said land from the second respondent's son (Gopal). The second respondent applied for the said land to be

transferred to her as beneficiary of the deceased's estate under the Small Estates (Distribution) Ordinance 1955 and on 20 April 1983, the land administrator made an order that the assets under the deceased's estate, including the said land, be transferred to the second respondent. The appellant lodged several more private caveats (the second, third and fourth private caveats) against the said land over the years. On 30 April 2001 (subsequent to the issuance of Form E of the Small Estate (Distribution) Ordinance 1955) the said land was transferred into the second respondent's name. When the second respondent submitted the transfer form of the said land to be registered into her name, the second respondent also applied for the appellant's fourth private caveat against the said land be removed. The second respondent averred to not having any knowledge of the alleged transaction between Gopal and the appellant and that such a transaction was not valid as Gopal was not the owner of the said land and accordingly had no right to sell the said land to the appellant. The Land Administrator then issued to the appellant, as caveator, the requisite 'Notice of Intention of Removal of Caveat' as provided in s. 326 in terms of Form 19C of the National Land Code ('the Code'). The appellant was required to furnish a court order to the Land Administrator within a period of 60 days which the appellant failed to do. Thus, the appellant's fourth private caveat was cancelled by the Land Administrator. Subsequent to the cancellation of his fourth private caveat, and pending the disposal of the originating summons to extend his fourth private caveat, the appellant then registered a fifth private caveat against the said land. The second respondent then filed a summons in chambers for an order that the appellant's fifth private caveat be set aside. The second respondent's application was allowed, and the appellant's application to extend his fourth private caveat was dismissed by the judicial commissioner. Hence, this appeal.

Held (dismissing appellant's appeal)
Per Zaleha Zahari JCA delivering the judgment of the court:

(1) The court's power to extend a caveat under s. 326(2) of the Code is only exercisable where a caveat is still "alive" and is no longer exercisable after a caveat has been cancelled. On the facts of this case, the Land Administrator had clearly acted within the powers conferred upon him by s. 326(1B) of the Code in removing the appellant's fourth private caveat for failure to furnish a court order within the time specified. The

A Judicial Commissioner was right in ruling that once a private caveat had been removed, the Code does not give the court power to revive, renew/continue a private caveat which had been cancelled. It was not within the inherent jurisdiction of the court to make orders which went beyond the limit of the
B powers expressly given to it by statute. Once the appellant's fourth private caveat was removed, this triggered the operation of s. 329(2) of the Code. According to this provision, the appellant was precluded from entering a private caveat against the said land on the same grounds as the fourth private caveat
C which had been cancelled. The entry of the fifth private caveat by the appellant was clearly in breach of s. 329(2) of the Code. (paras 15-17)

(2) The Judicial Commissioner should have considered the issue
D whether the alleged transaction between Gopal and the appellant conferred upon the appellant a caveatable interest. In *Chor Phaik Har v. Farlim Properties Sdn Bhd*, the Federal Court held that a beneficiary under an intestacy had no interest or property in the personal estate of a deceased
E person until the administration of a deceased estate was complete and distribution made according to the law of distribution of estate. As the alleged transaction with Gopal who was then but a beneficiary in the estate of the deceased, the administration and distribution was then incomplete. The
F alleged transaction with Gopal was accordingly invalid and of no legal effect. (para 21)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang telah
G membenarkan permohonan responden kedua untuk membatalkan satu kaveat persendirian yang telah dimasukkan oleh perayu ke atas tanah GM 1889 Lot No 2437 Mukim Gali ('tanah tersebut'), di mana responden kedua adalah pemilik berdaftar. Fakta-fakta latar belakangnya adalah tanah tersebut sebelum ini didaftarkan di
H atas nama arwah suami responden kedua, Pakiry s/k Katan (simati). Pada 22 Mac 1982, perayu mendaftarkan kaveat persendirian terhadap tanah tersebut (kaveat pertama) atas sebab beliau telah membeli tanah tersebut dari anak lelaki responden kedua (Gopal). Responden kedua memohon untuk tanah tersebut
I dipindah milik kepadanya sebagai benefisiari estet si mati di bawah Akta Harta Pusaka Kecil (Pembahagian) 1955 dan pada 20 April 1983, Pentadbir Tanah telah membuat perintah aset-aset di bawah

estet si mati, termasuk tanah tersebut, dipindah milik kepada responden kedua. Perayu telah memasukkan beberapa kaveat persendirian (kaveat persendirian kedua, ketiga dan keempat) terhadap tanah tersebut dalam beberapa tahun ini. Pada 30 April 2001 (berikutan pengeluaran Borang E Akta Harta Pusaka Kecil (Pembahagian) 1955) tanah tersebut telah dipindah milik ke nama responden kedua. Apabila responden kedua menyerahkan borang pemindahan tanah tersebut untuk didaftarkan di dalam namanya, responden kedua juga memohon untuk kaveat persendirian keempat perayu ke atas tanah itu dikeluarkan. Responden kedua menegaskan bahawa beliau tidak mempunyai pengetahuan mengenai transaksi yang didakwa berlaku di antara Gopal dan perayu dan transaksi itu tidak sah kerana Gopal bukan pemilik tanah tersebut dan oleh itu tidak mempunyai hak untuk menjual tanah tersebut kepada perayu. Pentadbir Tanah kemudiannya mengeluarkan kepada perayu, sebagai pengkaveat, notis bersyarat iaitu 'Notis Niat Mengeluarkan Kaveat' selaras dengan peruntukan s. 326 dari segi Borang 19C Kanun Tanah Negara ('Kanun'). Perayu diperlukan memberikan perintah mahkamah kepada Pentadbir Tanah dalam tempoh 60 hari tetapi perayu gagal untuk berbuat demikian. Oleh itu, kaveat persendirian keempat perayu telah dibatalkan oleh Pentadbir Tanah. Berikutan pembatalan kaveat persendirian keempatnya, dan sementara menunggu keputusan saman pemula untuk melanjutkan kaveat persendirian keempat, perayu telah mendaftarkan kaveat persendirian kelima ke atas tanah tersebut. Responden kedua kemudiannya memfailkan saman dalam kamar satu perintah untuk kaveat persendirian kelima perayu diketepikan. Permohonan responden kedua telah dibenarkan, dan permohonan perayu untuk melanjutkan kaveat persendirian keempatnya telah ditolak oleh Pesuruhjaya Kehakiman. Oleh itu, rayuan ini.

Diputuskan (menolak rayuan perayu)
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Bidangkuasa mahkamah untuk melanjutkan kaveat di bawah s. 326(2) Kanun hanya boleh dilaksanakan di mana sesuatu kaveat itu masih 'hidup' dan tidak boleh lagi dilaksanakan selepas sesuatu kaveat itu telah dibatalkan. Atas fakta kes ini, Pentadbir Tanah telah dengan jelas bertindak dalam bidangkuasanya yang telah diberi oleh s. 326(1B) Kanun dalam mengeluarkan kaveat persendirian keempat perayu kerana kegagalannya menyediakan perintah mahkamah dalam masa

yang ditentukan. Pesuruhjaya Kehakiman betul apabila memutuskan bahawa sebaik sahaja satu kaveat persendirian dikeluarkan, Kanun tidak memberi mahkamah bidangkuasa untuk menghidupkan semula, memperbaharui/meneruskan kaveat persendirian yang telah dibatalkan. Ia bukan dalam kuasa sedia ada mahkamah untuk membuat perintah-perintah yang melampaui batas had kuasa-kuasa yang dengan nyata diberi oleh statut. Sebaik sahaja kaveat persendirian keempat perayu dikeluarkan ia telah mencetuskan operasi s. 329(2) Kanun. Menurut peruntukan itu, perayu dihalang dari memasuki kaveat persendirian terhadap tanah tersebut atas alasan-alasan yang sama seperti kaveat persendirian keempat yang telah dibatalkan. Kemasukan kaveat persendirian kelima oleh perayu dengan jelasnya melanggari s. 329(2) Kanun.

(2) Pesuruhjaya Kehakiman sepatutnya mempertimbangkan isu sama ada transaksi yang didakwa berlaku di antara Gopal dan perayu telah memberi perayu kepentingan berkaveat. Di dalam kes *Chor Phaik Har v. Farlim Properties Sdn Bhd*, Mahkamah Persekutuan telah memutuskan bahawa seseorang benefisiari dalam kematian tidak berwasiat tidak mempunyai kepentingan atau harta di dalam estet peribadi seseorang yang telah mati sehingga pentadbiran estet simati diselesaikan dan pengagihan dibuat menurut undang-undang pengagihan estet. Oleh kerana transaksi yang didakwa berlaku dengan Gopal yang pada ketika itu hanya benefisiari di dalam estet simati, pentadbiran dan pengagihan adalah tidak lengkap. Transaksi yang didakwa berlaku dengan Gopal adalah tidak sah dan tidak mempunyai kesan di sisi undang-undang.

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***

Legislation referred to:
National Land Code, ss. 323(1)(a), 326(1), (1A)(a), (1B), (2), 329(2)

For the appellant - in person
For the 1st respondent - Kamal Azira Hassan; State Legal Advisor

Amicus Curiae for 2nd respondent - Dato' M Ramachelvam; M/s Rama-Rozi & Assocs

[Appeal from High Court, Temerloh; Originating Summons No: 24-190-01]

Reported by Suhainah Wahiduddin

JUDGMENT

Zaleha Zahari JCA:

[1] This appeal is against the decision of the Temerloh High Court in allowing the 2nd respondent's (the 2nd defendant in the High Court) application to cancel a private caveat lodged by the appellant against land known as GM 1889 Lot No. 2437, Mukim Gali, District of Raub, State of Pahang, Darul Makmur "the said land", of which the 2nd respondent is the registered owner) which caveat was filed when the disposal of an originating summons to extend an earlier private caveat lodged by him in respect of the same land on the same grounds was then pending.

[2] The learned judicial commissioner (as he then was) had, on 21 January 2002, allowed the 2nd respondent's application and ordered that private caveat No. 510/2001 registered on 14 August 2001 lodged by the appellant against the said land be cancelled. The judicial commissioner then dismissed with costs the appellant's originating summons to extend private caveat No. 150/2001 lodged on 23 April 2001 against the said land. He further directed that damages be assessed by the Senior Assistant Registrar arising from the entry of the caveat.

Background

[3] The background facts are as follows. The said land was previously registered in the name of the 2nd respondent's late husband, Pakiry s/o Katan (Deceased), (Pakiry) who died on 3 May 1950.

[4] On 22 March 1982 the appellant registered a private caveat against the said land *vide* Presentation No: 64/1982 Vol. 3 Folio. 39 ("the 1st caveat") on the ground that he had purchased the said land from Pakiry/2nd respondent's son, Gopalakrishnan s/o Pakiry (Gopal), at a purchase price of RM15,500.

[5] The appellant produced two receipts, one dated 29 December 1980 and the second dated 11 May 1981, for the sum of RM500 and RM1,100 respectively as proof of the said purchase. At the time of said purchase the said land was still registered in Pakiry's name as the letters of administration of Pakiry's Estate had not as at that date been extracted.

A **[6]** In 1983 the 2nd respondent applied for the said land to be transferred to her as beneficiary of Pakiry's estate under the Small Estates (Distribution) Ordinance 1955. Her two sons, Gopal and Nadarajah s/o Pakiry, renounced their rights in Pakiry's Estate in the 2nd respondent's favour. On 20 April 1983 the Land
B Administrator made an order that the assets under Pakiry's Estate, including the said land, be transferred to the 2nd respondent. Be that as it may, Form E under the Small Estate (Distribution) Ordinance 1955 was only issued on 10 April 2001.

C **[7]** The appellant lodged another private caveat against the said land *vide* Presentation No. 180/1988 Vol. 7 Folio. 59 ("the 2nd private caveat") on 22 March 1988 on the same grounds upon expiry of his 1st private caveat. Six years later, on 23 March 1994, the appellant lodged another private caveat *vide* Presentation
D No: 119/1994 Vol. 14 Fol. 8 ("the 3rd private caveat") on the same land on the same grounds upon the expiration of the 2nd private caveat. Six years thereafter, on 23 April 2001, upon expiration of the 3rd private caveat, another private caveat was lodged by the appellant *vide* Presentation No: 150/2001 ("the 4th
E private caveat") on the same grounds on the same land.

[8] On 30 April 2001(subsequent to the issuance of Form E of the Small Estate (Distribution) Ordinance 1955) the said land was transferred into the 2nd respondent's name. When the 2nd
F respondent submitted the transfer form of the said land to be registered into her name, the 2nd respondent also applied for the appellant's 4th private caveat (*ie*, No. 150/2001 lodged on 23 April 2001) against the said land be removed. The 2nd respondent averred to not having any knowledge of the alleged
G transaction between Gopal and the appellant. She averred that such a transaction was not valid as Gopal was not the owner of the said land and accordingly had no right to sell the said land to the appellant. The 2nd respondent averred that she had never consented to such a transaction.

H **[9]** The application to remove appellant's 4th private caveat under s. 326(1) of National Land Code (the Code) was made by using a Form then numbered as "Form 9" which reads as follows:

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Form 9

(Section 326)

APPLICATION FOR REMOVAL OF PRIVATE CAVEAT

To the *Registrar/Land Administrator ... I ... of ... being the *proprietor/lessee/sub-lessee/charge ... whose *land/interest is bound by Private Caveat volume No ... Folio No ... which is Entered by ... On the ... day of ... 19 ... hereby Apply for the removal of the said caveat under section 326 of the National Code.

2. As required, I submit herewith the prescribed fee of $ ...

Dated this ... day of ... 19 ...

...

Signature of applicant

[Attestation Clause]

SCHEDULE OF * LAND/INTEREST

(as in Form 13A)

[10] The Land Administrator Raub then issued to the appellant, as caveator, the requisite "Notice of Intention of Removal of Caveat" dated 16 May 2001 as provided in s. 326 in terms of Form 19C of the Code. Form 19C was served on the appellant, pursuant to s. 326(1A)(a) of the Code on 23 April 2001. The appellant was required to furnish a court order to the Land Administrator within a period of 60 days (ie, on or before 16 July 2001) failing which the appellant's 4th private caveat would be cancelled.

[11] Three days before the period to furnish such an order was scheduled to expire, the appellant had, on 13 July 2001 filed Temerloh Originating Summons No. 24-190-2001 for an order to extend his 4th private caveat.

[12] By reason of the appellant's failure to furnish a court order to the Land Administrator before the expiry of the period of sixty days specified in the notice, on 21 July 2001 the appellant's 4th private caveat was cancelled by the Land Administrator. Subsequent to the cancellation of his 4th private caveat, and pending the disposal of the originating summons to extend his 4th private caveat, the appellant then on 14 August 2001, *vide* Presentation No. 510/2001, registered another private caveat ("the

A 5th private caveat") against the said land on the same grounds as that of the 4th private caveat which had been cancelled by the Land Administrator.

[13] The 2nd respondent then on 28 September 2001 filed a
B summons-in-chambers in the originating summons filed by the appellant to extend his 4th private caveat, for an order that the appellant's 5th private caveat be set aside. As earlier stated in this judgment, the 2nd respondent's application was allowed, and the appellant's application to extend his 4th private caveat was
C dismissed by the judicial commissioner.

[14] Under s. 323(1)(a) of the Code, apart from satisfying the court as that he has a caveatable interest and the existence of a triable issue, a caveator must also go on to satisfy the court that on a balance of convenience it would be better to maintain it
D pending the disposal of the action.

[15] The popular meaning attributed to the word "extend" in s. 326(2) of the Code is that it enlarges or gives further duration to any existing right rather than re-vests an expired right. We are
E in agreement with the judicial commissioner that the court's power to extend a caveat under s. 326(2) of the Code was only exercisable where a caveat is still "alive" and was no longer exercisable after a caveat had been cancelled.

F **[16]** On the facts of this case the Land Administrator had clearly acted within the powers conferred upon him by s. 326(1B) of the Code in removing the appellant's 4th private caveat for failure to furnish a court order within the time specified. The judicial commissioner was right in ruling that once a private caveat has
G been removed, the Code does not give the court power to revive, renew/continue a private caveat which has been cancelled. It is not within the inherent jurisdiction of the court to make orders which go beyond the limit of the powers expressly given to it by statute.

H **[17]** Once the appellant's 4th private caveat was removed this triggered the operation of s. 329(2) of the Code. According to this provision the appellant is precluded from entering a private caveat against the said land on the same grounds as the 4th
I private caveat which had been cancelled. The entry of the 5th caveat by the appellant was clearly in breach of s. 329(2) of the Code.

[18] On the issue of the 2nd respondent's usage of an incorrect form in applying for the removal of the appellant's 4th private caveat, we are in agreement with the submission of Dato' Ramachelvam who was acting as amicus curie for the 2nd respondent, that nothing turns on this point. The amendments made by National Land Code (Amendment) Act 1992 (A 832/1992 re-numbered the existing "Form 9" (Application For Removal of Private Caveat) as "Form 19H". We note that the contents of the re-numbered "Form 19H" and that numbered as "Form 9" prior to the amendment, are exactly the same.

[Form 19H]

(Section 326)

APPLICATION FOR REMOVAL OF PRIVATE CAVEAT

Here Enter the name of the State of District as appropriate	To the *Registrar/Land Administrator ... I ... of ... being the *proprietor/lessee/sub-lessee/charge ... whose *land/interest is bound by Private Caveat Volume No ... Folio No ... which is entered by ... on the ... day of ... 19 ... hereby apply for the removal of the said caveat under section 326 of the National Land Code.
	2. As required, I submit herewith the prescribed fee of RM ...
	Dated this ... Day of ... 19 ...
	.... Signature

[Attestation Clause]

SCHEDULE OF *LAND/INTEREST

(as in Form 13A)]

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* Delete as appropriate

[19] Clearly, the use of the Form numbered as "Form 9" instead of the re-numbered "Form 19H" of the Code has no substantial effect and the appellant has not been misled by the use of such a Form.

A **[20]** On the other issues raised as to the merits of the appellant's claim on the alleged purchase of the said land, and the issue of limitation raised by the 2nd respondent, these were considered to be as irrelevant by the judicial commissioner which need not be considered at that stage.

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[21] We are of the view that the judicial commissioner should have considered the issue whether the alleged transaction between Gopal and the appellant confers upon the appellant a caveatable interest. In *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393 the Federal Court held that a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of a deceased estate is complete and distribution made according to the law of distribution of estate. As the alleged transaction with Gopal who was then but a beneficiary in Pakiry's estate, the administration and distribution was then incomplete. The alleged transaction with Gopal was accordingly invalid and of no legal effect.

[22] For the abovementioned reasons the appellant's appeal was dismissed with costs. In the exercise of our discretion we made no order as to costs. The deposit to the appellant.

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